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14 Attorneys for A-Para Transit Corp.

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 DARRYL FOSTER on behalf of himself, all  
18 others similarly situated, and on behalf of the  
19 general public,

20 Plaintiffs,

21 v.

22 A-PARA TRANSIT CORP.; and DOES 1-  
23 100,

24 Defendants.

25 Case No.

26 *[Alameda County Case No. RG18920985]*

27 **NOTICE OF REMOVAL**

28 Complaint Filed: September 18, 2018

**TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF CALIFORNIA:**

3 PLEASE TAKE NOTICE that Defendant A-Para Transit Corp. (“Defendant”) hereby  
4 removes the matter of *Darryl Foster v. A-Para Transit Corp.*, pending in the Superior Court of the  
5 State of California for the County of Alameda, Case No. RG18920985, to the United States  
6 District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1331, 1441(a) and  
7 (c), and 1445(a), (b), and (d). The removal is based on the existence of a federal question, as  
8 Plaintiff Darryl Foster’s (“Plaintiff”) claims substantially depend on the interpretation of a  
9 collective bargaining agreement (“CBA”) and thus, his claims are preempted under Section 301 of  
10 the Labor Management Relations Act (“Section 301”). 29 U.S.C. § 185. This Court has original  
11 jurisdiction over the action pursuant to its federal question jurisdiction for the following reasons:

## I. CLAIMS AND PROCEDURAL HISTORY

13       1. The Complaint in this action was filed in Alameda County Superior Court on  
14 September 18, 2018 and assigned Case No. RG18920985. A In the Complaint, Plaintiff alleges:  
15 (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to  
16 provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to authorize and  
17 permit recovery periods; (6) knowing and intentional failure to comply with itemized employee  
18 wage statement provisions; (7) failure to pay all wages due at the time of termination of  
19 employment; (8) violation of unfair competition law; and (9) failure to provide a copy of  
20 personnel records within 30 days of receiving personnel file requests from employees.

21       2. Plaintiff served his Complaint on Defendant on or about September 19, 2018 by  
22 substituted service. Plaintiff also served Defendant with a Summons and a Civil Case Cover  
23 Sheet. True and correct copies of these documents are attached as **Exhibits A-C**.

24       3.      On September 19, 2018, the Court issued a Notice of Complex Determination  
25 Hearing on October 30, 2018 and Case Management Conference. A true and correct copy of the  
26 Notice is attached as **Exhibit D**.

27 4. On September 21, 2018, Plaintiff served Defendant with the Proof of Service of the  
28 Complaint. A true and correct copy of the Proof of Service is attached as **Exhibit E**.

1       5. Exhibits A-E contain all process, pleadings, and orders served on Defendant in  
 2 accordance with 28 U.S.C. 1446(a). No other proceedings have been held in this action.

3       6. Plaintiff did not expressly enumerate any claim under federal law or make any  
 4 mention that the adjudication of his claims relies on an interpretation of the CBA(s). However,  
 5 Plaintiff and the class of employees he seeks to represent is largely comprised of members of the  
 6 Amalgamated Transit Union, Local 192 (the “Union”) and who worked in positions covered by a  
 7 valid collective bargaining agreement (“CBA”). (Declaration of Gina Kumar (“Kumar Decl.”), ¶  
 8 4.) Plaintiff cannot avoid preemption by omitting an allegation that the terms and conditions of  
 9 the majority of the non-exempt California employees employed by Defendant that he seeks to  
 10 represent were subject to a CBA.

11       7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(c)(2), 1391 and 1446.  
 12 This district and division embraces the County of Alameda where the action is pending in the  
 13 Superior Court of California, County of Alameda. Therefore, this action may be removed to this  
 14 Court pursuant to 28 U.S.C. § 1441(a).

15                   **II. ALL NECESSARY PARTIES HAVE JOINED THIS REMOVAL**

16       8. A-Para Transit Corp. is the only named defendant in this action. Although the  
 17 Complaint names Doe defendants, Doe defendants need not join in a Notice of Removal. *See*  
 18 *Salveson v. Western States Bankcard Assoc.*, 731 F.2d 1423, 1429 (9th Cir. 1984) (“[o]ur circuit  
 19 rule is that a party not served need not be joined; the defendants summoned can remove by  
 20 themselves”).

21                   **III. TIMELINESS OF REMOVAL**

22       9. Defendant was deemed served on September 29, 2018, by substituted service.  
 23 Defendant has removed this case within 30 days of first receiving a paper from which Defendant  
 24 could discern that the matter is removable under federal question grounds as a result of Section  
 25 301 preemption, which occurred when service was completed on September 29, 2018. *See* 28  
 26 U.S.C. § 1446(b)(3) (“a notice of removal may be filed within thirty days after receipt by the  
 27 defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other

1 paper from which it may first be ascertained that the case is one which is or has become  
 2 removable"). Accordingly, this notice of removal is timely.

3 **IV. FEDERAL QUESTION JURISDICTION BASED ON SECTION 301 PREEMPTION**

4 10. This Court has original jurisdiction under 28 U.S.C. § 1331, and this case may be  
 5 removed pursuant to the provisions of 28 U.S.C. § 1441(a) and (c) in that it is a civil action that  
 6 presents a federal question.

7 11. Federal question jurisdiction arises out of the fact that adjudication of Plaintiff's  
 8 claims require interpretation of the terms of a CBA and thus are completely preempted by federal  
 9 law under the LMRA. 29 U.S.C. § 185. Section 301 of the LMRA provides that: "[s]uits for  
 10 violation of contracts between an employer and a labor organization representing employees in an  
 11 industry affecting commerce . . . may be brought in a district court for the United States having  
 12 jurisdiction of the parties without regarding to the amount in controversy or without regarding to  
 13 the citizenship of the parties." *Firestone v. Southern Cal. Gas. Co.*, 219 F.3d 1063, 1065 (9th Cir.  
 14 2000). To ensure uniform interpretations of CBAs, federal common law preempts the use of state  
 15 contract law in collective bargaining agreement interpretation and enforcement. *See Lingle v.*  
 16 *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 411 (1988).

17 12. Further, all state law claims raised by an employee that require interpretation of a  
 18 collective bargaining agreement must be brought pursuant to Section 301. *Allis-Chalmers Corp.*  
 19 *v. Lueck*, 571 U.S. 202, 211 (1985). "The preemptive force of section 301 is so powerful that it  
 20 displaces entirely any state cause of action for violation of a collective bargaining agreement . . .  
 21 any state claim whose outcome depends on analysis of the terms of the agreement." *Newberry v.*  
 22 *Pac. Racing Ass'n*, 854 F.2d 1142, 1146 (9th Cir. 1988); *see Voorhees v. Naper Aero Club, Inc.*,  
 23 272 F.3d 398, 403 (7th Cir. 2001) (noting that Section 301 is one of "only two areas in which the  
 24 Supreme Court has found that Congress intended completely to replace state law with federal law  
 25 for purposes of federal jurisdiction").

26 13. Section 301 specifically has been held to preempt California state law claims that  
 27 are substantially dependent upon interpretation of a collective bargaining agreement. *Firestone*,  
 28 219 F.3d at 1066–67; *Buck v. Cemex, Inc.*, 2013 U.S. Dist. LEXIS 124111, \*1, 17 (E.D. Cal. Aug.

1 29, 2013) (Labor Code claims preempted by the LMRA because their “resolution … is  
 2 ‘substantially dependent upon’ the terms of the CBA”). This is so even where interpretation was  
 3 required to evaluate the employer’s defense to a plaintiff’s state law causes of action. *See Levy v.*  
 4 *Skywalker Sound*, 108 Cal.App.4th 753, 769 (2003) (claim for unpaid wages preempted because it  
 5 “rest[ed] entirely” on a claim that plaintiff was “entitled . . . to wages at the level set by the  
 6 CBA”).

7       **A. Plaintiff and the Putative Class Members Are Covered by a CBA**

8       14. Plaintiff was employed by Defendant from July 2016 until his resignation on  
 9 December 1, 2016. Plaintiff’s entire employment was covered by a CBA. Through his  
 10 Complaint, Plaintiff seeks unpaid wages, penalties, and other relief on behalf of himself and all  
 11 other class members.

12       15. Defendant is a private employer providing paratransit transportation services to the  
 13 elderly and disabled in the Bay Area of California. (Kumar Decl., ¶ 4.) The vast majority of  
 14 Defendant’s commercial drivers, including Plaintiff, are subject to a CBA between A-Para and the  
 15 Union. (*Id.*)

16       16. Defendant is an employer within the meaning of the LMRA, 29 U.S.C. § 152(2).

17       17. Amalgamated Transit Union is a labor organization within the meaning of Section  
 18 2(5) of the NLRA and 301(a) of the LMRA, 29 U.S.C. §§ 152(5) and 185(a).

19       18. Article 1 of the CBA specifically states that the Union is the exclusive  
 20 representative for the drivers covered by the CBA. (Kumar Decl., Ex. 1, p. 1, Article 1.)

21       **B. Plaintiff’s Claims Are Preempted by the LMRA Because They Require  
 22 Substantial Interpretation of Various Provisions of the CBA**

23           **i. Plaintiff’s Failure to Reference Section 301 of the LMRA in His  
 24 Complaint Does Not Preclude Removal**

25       19. The Complaint omits the fact that Plaintiff worked in a position covered by the  
 26 CBA. However, a plaintiff may not be permitted to “artfully plead” his complaint to conceal the  
 27 true nature of the complaint. *Young v. Anthony’s Fish Grottos, Inc.*, 830 F.2d 993, 997 (9th Cir.  
 28 1987) (holding that plaintiff’s state law claim was preempted even though operative complaint  
 made no mention of a collective bargaining agreement); *Schroeder v. Trans World Airlines, Inc.*,

1 702 F.2d 189, 191 (9th Cir. 1983), overruled in part on other grounds in *Moore-Thomas v. Alaska*  
 2 *Airlines, Inc.*, 553 F.3d 1241 (9th Cir. 2009). Thus, the fact that Plaintiff has not made specific  
 3 reference to the CBA or to Section 301 in his Complaint will not preclude removal. *See Milne*  
 4 *Employees Ass'n v. Sun Carriers, Inc.*, 960 F.2d 1401, 1406 (9th Cir. 1991). The Court may  
 5 properly look beyond the face of the Complaint to determine whether the claims asserted are in  
 6 fact preempted by Section 301. *See Lippitt v. Raymond James Financial Servs., Inc.*, 340 F.3d  
 7 1033, 1041 (9th Cir. 2003). Additionally, the Court may properly look to the facts stated in the  
 8 Notice of Removal “to clarify the action a plaintiff presents and to determine if it encompasses an  
 9 action within federal jurisdiction.” *Schroeder*, 702 F.2d at 191.

10 20. An artfully pled state law claim is properly “recharacterized” as a federal claim  
 11 under the “complete preemption” doctrine, which provides that the preemptive force of Section  
 12 301 “converts an ordinary state law complaint into one stating a federal claim for purposes of the  
 13 well-pleaded complaint rule” and is removable to federal court. *Caterpillar Inc. v. Williams*, 482  
 14 U.S. 386, 393 (1987); *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 23  
 15 (“[I]f a federal cause of action completely preempts a state cause of action, any complaint  
 16 that comes within the scope of the federal cause of action necessarily ‘arises’ under federal law”).

17 ii. **Plaintiff's Claims Are “Inextricably Intertwined” with Consideration  
 18 of the Terms of the CBA**

19 21. The Court cannot simply look to state law to resolve Plaintiff's artfully pled claims  
 20 for breach of a CBA. Plaintiff asserts Defendant: (1) failed to pay all straight time wages; (2)  
 21 failed to pay all overtime wages; (3) failed to provide meal periods; (4) failed to authorize and  
 22 permit rest periods; (5) failed to authorize and permit recovery periods; (6) knowing and  
 23 intentional failed to comply with itemized employee wage statement provisions; (7) failed to pay  
 24 all wages due at the time of termination of employment; (8) violated the unfair competition law;  
 25 and (9) failed to provide a copy of personnel records within 30 days of receiving personnel file  
 26 requests from employees. Plaintiff alleges these violations on behalf of himself and all other non-  
 27 exempt, hourly drivers, bus drivers, bus operators, or similar job designations currently or  
 28 formerly employed by Defendant. Thus, Plaintiff's claims cannot be adjudicated without

1 interpretation of numerous CBA provisions that govern the employment of a majority of  
 2 Defendant's employees.

3       22. The applicable CBA and side letters contain language governing time worked,  
 4 wages, overtime, and meal and rest periods. The CBA also provide for a grievance process and  
 5 requires binding arbitration to resolve any disputes arising under the CBAs. Because Plaintiff's  
 6 alleged claims implicate terms and conditions that have bargained for and are expressly covered  
 7 by the provision of the governing CBA, resolution of Plaintiff's claims asserted on behalf of all of  
 8 Defendant's non-exempt employees will require the Court to interpret, at a minimum, all of these  
 9 provisions:

10       23. **Wages, Hours, and Overtime.** The CBA and side letters set forth the parties'  
 11 mutual agreement regarding all issues pertaining to employee wages, hours, and overtime. There  
 12 are a number of provisions in the CBA that must be interpreted, including but not limited to hours  
 13 of work, pay dates, minimum pay, overtime pay, pre-trip compensation, shift start and end times,  
 14 show-up time, excess hours, call-outs, and special shifts. (Kumar Decl., Ex. 1, p. 3-6, Article 6,  
 15 Sections 1, 2, 3, 4, 5, 6, Article 8; Ex. 2.) For example, Article 3, Section 3 of the CBA provides  
 16 that: "A driver shall not report for or perform any work prior to the scheduled start time of their  
 17 shift." (*Id.* at Article 6, Section 3.) Section 4 provides additional compensation, 15 minutes of  
 18 compensable work time for van drivers and 10 minutes for sedan drivers, for performing pre-trip  
 19 duties. (*Id.* at Article 6, Section 4.) Section 5 provides that "A driver's work time ends after their  
 20 last trip is concluded, the vehicle is returned to the yard and their post-trip is completed." (*Id.* at  
 21 Article 6, Section 5.) Plaintiff alleges that he and putative class members were denied regular and  
 22 overtime wages because Defendant had a policy of "not paying" for all hours worked, including  
 23 "'before clocking in,'" "'after clocking out,'" and during meal periods. Thus, under Plaintiff's  
 24 theory of liability, it is necessary to interpret the CBA's provisions concerning pre and post shift  
 25 work (*Id.* at Sections 3 and 4), when compensable work time begins and ends (*Id.* at Section 5),  
 26 and the provision of additional compensation. (*Id.*)

27       24. California Labor Code section 514 and Wage Order No. 9 provide that overtime,  
 28 alternative workweeks, and meal and rest period requirements do not apply to employees covered

1 by a valid CBA, so long as the CBA provides wages, hours of work, working conditions, premium  
 2 wage rates for all overtime hours worked, and wages for all regular hours worked are not less than  
 3 30% more than the state's minimum wage. Here, the CBA meets those criteria: it provides for  
 4 wages, hours, and working conditions; and specifically calls for and defines premium pay for all  
 5 overtime hours worked; in addition to requiring that employees be paid at an hourly rate of more  
 6 than 30% above the state minimum wage. As a result, the CBAs here must be interpreted to  
 7 resolve Plaintiff's claims.

8       25.    **Meal Breaks.** The CBA lays out the conditions under which Defendant's  
 9 employees are entitled to meal breaks. The CBA provides: "Eight (8) hours completed within  
 10 eight (8) consecutive work hours, excluding an unpaid and duty-free meal period, shall constitute a  
 11 work day"; "meal periods are duty-free and are, therefore, unpaid and not considered hours  
 12 worked"; "each driver who works a period of more than five (5) hours in a day shall take an  
 13 unpaid meal period of at least thirty (30) minutes in duration"; "each driver who works a period of  
 14 more than ten (10) hours in a day shall take a second unpaid meal period of at least thirty (30)  
 15 minutes in duration"; "during a meal period, a driver is relieved of all duty and may not perform  
 16 any work"; "there is no paid travel time for a meal period"; "the time and duration of a driver's  
 17 unpaid meal period shall be determined by their manifest for the day and based upon the demands  
 18 of the Client"; "a meal period will be deemed to begin at the time of the last drop off immediately  
 19 prior the meal period" and "continue until a driver begins to drive to his/her first pickup  
 20 immediately following a meal period"; and "a driver will enter the time they begin and end a meal  
 21 period on their manifest." (Kumar Decl., Ex. 1, p. 3-5, Article 6, Sections 1, 2, 8.) Plaintiff alleges  
 22 that he and putative class members were denied meal periods and improperly compensated  
 23 because Defendant had a policy of not allowing meal periods unless scheduled, assigning too  
 24 much work, and "clocking out Plaintiffs and those similarly situated for thirty (30) minute meal  
 25 periods" even though they were allegedly not taken. To adjudicate Plaintiff's meal period claim,  
 26 it is necessary to interpret the CBA's provisions defining the start and end time of meal periods,  
 27 scheduling and recording meal periods, and the duration of a meal period (Section 8).

28

1       26.   **Rest Breaks.** The CBA lays out the conditions under which employees are entitled  
 2 to rest breaks. The CBA provides: each driver shall “take a ten (10) minute rest period, which,  
 3 insofar as practicable, shall be in the middle of each driver’s work period which for the purpose of  
 4 this section is defined as four consecutive work hours or major fraction thereof”; “based on the  
 5 demands of their run on any given day, each driver will determine when to take their paid rest  
 6 period, focusing primarily on daily down time during a run due to ride cancellations and/or rider  
 7 no-shows as an appropriate time for their rest period”; “a driver who believes that the demands of  
 8 their run will not permit him/her to take a rest period in or about the middle of a work period may  
 9 contact the dispatcher to address the situation”; and “a driver whose total daily work time is less  
 10 than three and one-half (3½) hours is not authorized to take a rest period”; and “a driver may not  
 11 combine a paid rest period with an unpaid meal periods.” (Kumar Decl., Ex. 1, p. 5, Article 6,  
 12 Section 7.) Plaintiff alleges that Defendant did not authorize and permit rest periods because  
 13 Defendant assigned too much work. To adjudicate this claim, the CBA’s rest period provision,  
 14 including but not limited to the requirement that drivers “contact the dispatcher” if they believe  
 15 that the “demands of their run will not permit him/her to take a rest period in or about the middle  
 16 of a work period,” and that “each driver will determine when to take their paid rest period.” (*Id.* at  
 17 Section 7.)

18       27.   **Rounding.** Plaintiff alleges Defendant underpaid Plaintiff and those similarly  
 19 situated because of an alleged rounding practice, or “dinging,” “shaving,” or “scrubbing.”  
 20 Because the CBA has provisions detailing the wages, overtime, hours, pre and post shift work,  
 21 recording meal periods, and the provision of additional compensation for certain pre- and post-  
 22 shift activities, determining whether or not Defendant and the Union actually contemplated  
 23 rounding in the wages and hours worked provisions of the CBAs requires analyzing the CBAs and  
 24 any supporting documents to determine the parties’ intent in the negotiation process.

25       28.   **Grievance and Arbitration Procedure.** Additionally, the grievance and  
 26 arbitration procedure set forth in the CBA covers “any controversy...arising out of or by virtue of  
 27 this Labor Agreement.” (Kumar Decl., Ex. 1, p. 15, Article 17, Section 1.) The promotion of  
 28 extra-judicial dispute resolution is another purpose of Section 301 preemption. State court

1 lawsuits properly removed on preemption grounds may then be deferred to arbitration, if the  
2 parties to the CBA have so agreed. *See Livadas v. Bradshaw*, 512 U.S. 107, 142, fn. 18 (1994).  
3 Here, the parties have so agreed, and the claims are therefore subject to arbitration as discussed  
4 above. Accordingly, an alleged violation of the CBA is subject to the grievance and arbitration  
5 procedures set forth therein. As all of Plaintiff's claims are in essence alleged violations of the  
6 relevant CBA, the Court will necessarily have to interpret the grievance and arbitration provisions  
7 to analyze Plaintiff's claims in this case.

8 29. Amidst Plaintiff's numerous allegations against Defendant, one claim is  
9 particularly important in resolving this jurisdictional issue before the Court. Plaintiff's meal  
10 period claim under Labor Code section 512(a) is subject to an express exemption under a clause  
11 that specifically excludes employees covered by a valid CBA from having a cause of action under  
12 that section. Labor Code section 512(e) states that subsection 512(a) does not apply to  
13 "commercial drivers," and employees whose work includes "maintenance, improvement, and  
14 repair, and any other similar or related occupation or trade" when the employee is covered by a  
15 CBA meeting certain requirements. The additional CBA requirements are: "The valid collective  
16 bargaining agreement expressly provides for the wages, hours of work, and working conditions of  
17 employees, and expressly provides for meal periods for those employees, final and binding  
18 arbitration of disputes concerning application of its meal period provisions, premium wage rates  
19 for all overtime hours worked, and a regularly hourly rate of pay of not less than 30 percent more  
20 than the state minimum wage rate." Accordingly, to resolve Plaintiff's meal break claim, it will be  
21 necessary to interpret the relevant CBA to determine whether the disputed provision satisfies the  
22 requirements of Labor Code section 512(e). *See Coria v. Recology, Inc.*, 63 F.Supp.3d (N.D. Cal.  
23 2014) (plaintiff's class allegation alleging failure to provide meal periods preempted by Section  
24 301 of the LMRA).

25 30. Accordingly, Plaintiff's claims arise under Section 301 of the LMRA, and is  
26 therefore preempted by federal law. Removal to federal court is thus warranted.  
27  
28

## **V. SUPPLEMENTAL JURISDICTION**

2       31. The Court has supplemental jurisdiction over any of Plaintiff's remaining state law  
3 claims to the extent they are not completely preempted by Section 301 or are not so inextricably  
4 intertwined with or dependent on an interpretation of the CBAs, because they relate to and  
5 emanate from the same employment relationship between Plaintiff and Defendant that is the  
6 subject of the federal question claims. All the pleaded claims thus emanate from and form part of  
7 the same "case or controversy," such that they should all be tried in one action. *See Nishimoto v.*  
8 *Federman-Backrach & Assoc.*, 903 F.2d 709, 714 (9th Cir. 1990). Considerations of convenience,  
9 judicial economy, and fairness to the litigants strongly favor this Court exercising jurisdiction over  
10 all claims in the Complaint. *See Executive Software v. U.S. Dist. Court*, 24 F.3d 1545, 1557 (9th  
11 Cir. 1994). Accordingly, by virtue of 28 U.S.C. § 1441, Defendant is entitled to remove all of  
12 Plaintiff's claims to this Court.

## **VI. NOTICE TO PLAINTIFF AND STATE COURT**

14 32. Contemporaneously with the filing of this Notice of Removal in the United States  
15 District Court for the Northern District of California, written notice of the removal will be given  
16 by the undersigned to counsel for Plaintiff and a copy of this Notice of Removal will be filed with  
17 the Clerk of the Superior Court of California, County of Alameda, as required by 28 U.S.C. §  
18 1446(d).

19       33.    **WHEREFORE**, having provided notice as required by law, the above-entitled  
20 action should be removed from the Superior Court of California, County of Alameda, to this Court  
21 and Defendant prays that it be so removed.

1 Dated: October 29, 2018

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3

4 By */s/ Amanda E. Beckwith*  
5 MORGAN P. FORSEY  
6 KEAHN N. MORRIS  
7 AMANDA E. BECKWITH

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Attorneys for A-Para Transit Corp.

# EXHIBIT A

FILED  
ALAMEDA COUNTY

SEP 18 2018

CLERK OF THE SUPERIOR COURT

By Sue Pecko Deputy

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 11 all others similarly situated, and on behalf of the general public.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 13 IN AND FOR THE COUNTY OF ALAMEDA**

14 DARRYL FOSTER on behalf of himself,  
 15 all others similarly situated, and on behalf  
 16 of the general public,

17 Plaintiffs,

18 v.

19 A-PARA TRANSIT CORP.; and DOES  
 20 1-100,

21 DEFENDANTS.

22 Case No.

23 **RG18920985**

24 **PLAINTIFF'S CLASS ACTION COMPLAINT  
 25 FOR DAMAGES, INJUNCTIVE RELIEF,  
 26 DECLARATORY RELIEF, AND  
 27 RESTITUTION**

28

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8 § 11090);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090);
- 5) Failure to Authorize and Permit Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395);
- 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 7) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203);
- 8) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).
- 9) Failure to Provide a Copy of Personnel Records Within 30 Days of Receiving Personnel File Requests from Employees (Lab. Code § 1198.5.)

29 **DEMAND FOR JURY TRIAL**

1 Plaintiff DARRYL FOSTER, on behalf of himself, all others similarly situated, and on  
2 behalf of the general public, complains of DEFENDANTS A-PARA TRANSIT CORP. and/or  
3 DOES and for causes of action and alleges:

4 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf  
5 of Plaintiff, DARRYL FOSTER, and all non-exempt, hourly drivers, bus drivers, bus  
6 operators, or similar job designations who are presently or formerly employed by A-PARA  
7 TRANSIT CORP. and/or DOES and/or their subsidiaries or affiliated companies and/or  
8 predecessors within the State of California.

9 2. At all times mentioned herein, A-PARA TRANSIT CORP. and/or DOES own and operate  
10 trucks, industrial trucks, industrial vehicles, and/or industrial work sites. At all times during  
11 the liability period, A-PARA TRANSIT CORP. and/or DOES have conducted business in  
12 Alameda County and elsewhere within California.

13 3. At all times mentioned herein, A-PARA TRANSIT CORP. and/or subsidiaries or affiliated  
14 companies and/or DOES, within the State of California, have, among other things, employed  
15 current and former non-exempt employees with job titles including, drivers, bus drivers, bus  
16 operators (hereinafter "non-exempt employees").

17 4. At all times mentioned herein, the common policies and practices of A-PARA TRANSIT  
18 CORP. and/or DOES were a direct cause of DEFENDANT'S and/or DOES' failure to  
19 comply with California's wage and hours laws, Wage Orders, and/or the California Labor  
20 Code, as set forth more fully within.

21 5. For at least four (4) years prior to the filing of this action and through to the present,  
22 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a consistent policy  
23 and/or practice of not paying Plaintiff and its Non-Exempt Employees for all of the hours  
24 they worked.

25 6. For at least four (4) years prior to the filing of this action and through to the present,  
26 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a continuous and  
27 widespread policy of not paying Plaintiff and those similarly situated for all hours they

28

worked, including before clocking in for their work shift, after clocking out for their work shift, and during unpaid meal periods. Further, DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a continuous and widespread policy to shave the time Plaintiff and those similarly situated worked (referred to as “time shaving”).

5 7. For at least four (4) years prior to the filing of this action and through to the present,  
6 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a continuous and  
7 widespread policy of "clocking-out" Plaintiff and those similarly situated for thirty (30)  
8 minute meal periods, even though Plaintiff and those similarly situated were suffered  
9 and/or permitted to work during these deduction periods, thereby deducting thirty (30)  
10 minutes of paid time, including straight time and overtime.

11 8. For at least four (4) years prior to the filing of this action and through to the present,  
12 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a consistent policy  
13 and/or practice of failing to provide all straight time and overtime wages owed to Non-  
14 Exempt Employees, as mandated under the California Labor Code and the implementing  
15 rules and regulations of the Industrial Welfare Commission's ("IWC") California Wage  
16 Orders.

17 9. For at least four (4) years prior to the filing of this action and through to the present,  
18 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a consistent policy  
19 of requiring Non-Exempt Employees within the State of California, including Plaintiff, to  
20 work through meal periods and work at least five (5) hours without a meal period and  
21 failing to pay such employees one (1) hour of pay at the employees' regular rate of  
22 compensation for each workday that the meal period is not provided, or other  
23 compensation, as required by California's state wage and hour laws, and automatically  
24 deducting a half hours pay from their wages.

25 10. For at least four (4) years prior to filing of this action and through the present,  
26 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES did not have a policy of  
27 allowing its hourly employees working shifts of ten (10) or more hours in a day to take a

1 second meal period of not less than thirty (30) minutes as required by the applicable Wage  
2 Order of the IWC.

3 11. For at least four (4) years prior to the filing of this action and through to the present,  
4 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a consistent policy  
5 of requiring Non-Exempt Employees within the State of California, including Plaintiff, to  
6 work over ten (10) hours without providing an additional, uninterrupted meal period of  
7 thirty (30) minutes and failing to pay such employees one (1) hour of pay at the employees'  
8 regular rate of compensation for each workday that the meal period is not provided, or  
9 other compensation, as required by California's state wage and hour laws.

10 12. For at least four (4) years prior to the filing of this action and through to the present,  
11 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a consistent policy  
12 and/or practice of requiring its Non-Exempt Employees within the State of California,  
13 including Plaintiff, to work for over four hours, or a major fraction thereof, without a 10  
14 minute rest period, and failing to pay such employees one (1) hour of pay at the employees'  
15 regular rate of compensation for each workday that the rest period is not provided, or other  
16 compensation, as required by California's state wage and hour laws.

17 13. For at least four (4) years prior to the filing of this action and through to the present,  
18 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES have had a consistent policy  
19 and/or practice of failing to provide Plaintiff and its Non-Exempt Employees with cool  
20 down recovery periods in accordance with California Code of Regulations, Title 8, section  
21 3395.

22 14. For at least four (4) years prior to the filing of this action and through to the present,  
23 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES and/or their officers and/or  
24 managing agents have had a consistent policy and/or practice of willfully failing to provide  
25 to Plaintiff and its Non-Exempt Employees, accurate itemized employee wage statements.

26 15. For at least four (4) years prior to the filing of this action and through to the present,  
27 DEFENDANTS A-PARA TRANSIT CORP. and/or DOES and/or their officers and/or  
28

1 managing agents have had a consistent policy and/or practice of willfully failing to timely  
2 pay wages owed to Plaintiff and those Non-Exempt Employees who left DEFENDANTS  
3 A-PARA TRANSIT CORP. and/or DOES employ or who were terminated.

4 16. For at least four (4) years prior to the filing of this action and through to the present, A-  
5 PARA TRANSIT CORP. and/or DOES, by failing to lawfully pay Plaintiff and those  
6 similarly situated all the wages they are owed, engaged in false, unfair, fraudulent and  
7 deceptive business practices within the meaning of the Business and Professions Code  
8 section 17200, et seq.

9 17. Throughout the statutory period, A-PARA TRANSIT CORP.'S and/or DOES' employees,  
10 including Plaintiff and similarly situated Non-Exempt Employees, were not provided all  
11 straight time and overtime wages owed, meal periods and rest periods, or compensation in  
12 lieu thereof, as mandated under the California Labor Code, and the implementing rules and  
13 regulations of the Industrial Welfare Commissions ("IWC") California Wage Orders.

14 18. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES employees,  
15 including Plaintiff and similarly situated Non-Exempt Employees were not provided with  
16 accurate and itemized employee wage statements.

17 19. A-PARA TRANSIT CORP. and/or DOES failed to comply with Labor Code section 226,  
18 subdivision (a), by itemizing in wage statements all hourly compensation and accurately  
19 reporting total hours worked by Plaintiff and the members of the proposed class. Plaintiff  
20 and members of the proposed class are entitled to penalties not to exceed \$4,000 for each  
21 employee pursuant to Labor Code section 226(b).

22 20. A-PARA TRANSIT CORP. and/or DOES failed to comply with Lab. Code §1198.5 by  
23 failing to provide a copy of personnel records within 30 days of the filing of personnel file  
24 requests.

25 21. A-PARA TRANSIT CORP. and/or DOES have failed to comply with IWC Wage Order  
26 9-2001(7) by failing to maintain accurate time records showing hourly compensation, when  
27 the employee begins and ends each work day and total daily hours worked by itemizing in  
28

1 wage statements and accurately reporting total hours worked by Plaintiff and members of  
2 the proposed class.

3 22. A-PARA TRANSIT CORP.'s and/or DOES' failure to retain accurate records of total  
4 hours worked by Plaintiff and the proposed class was willful and deliberate, was a  
5 continuous breach of A-PARA TRANSIT CORP.'s and/or DOES' duty owed to Plaintiff  
6 and the proposed class.

7 23. Throughout the statutory period, A-PARA TRANSIT CORP.'S and/or DOES' employees,  
8 including Plaintiff and similarly situated Non-Exempt Employees, were not timely paid all  
9 wages owed to them at the time of termination.

10 24. DEFENDANTS A-PARA TRANSIT CORP. and/or DOES are and were aware that  
11 Plaintiff and members of the proposed class were not paid all straight time and overtime  
12 wages owed, nor provided meal and rest periods. DEFENDANTS A-PARA TRANSIT  
13 CORP.'S and/or DOES' denial of wages and other compensation due to Plaintiff and  
14 members of the proposed class was willful and deliberate.

15 25. DEFENDANTS A-PARA TRANSIT CORP. and/or DOES, each and collectively,  
16 controlled the wages, hours, and working conditions of Plaintiff and the proposed class,  
17 creating a joint-employer relationship over Plaintiff and the proposed class.

18 26. Plaintiff DARRYL FOSTER, on behalf of himself and all of A-PARA TRANSIT CORP.'S  
19 and/or DOES' Non-Exempt Employees, brings this action pursuant to California Labor  
20 Code sections 226, subd. (b), 226.7. 510, 512, 515, 558, 1194, 1198.5, and California Code  
21 of Regulations, Title 8, sections 11090 and 3395, seeking unpaid wages, overtime, meal  
22 and rest period compensation, penalties, injunctive and other equitable relief, and  
23 reasonable attorneys' fees and costs.

24 27. Plaintiff DARRYL FOSTER, on behalf of himself and all putative Class members made  
25 up of A-PARA TRANSIT CORP.'S and/or DOES' non-exempt employees, pursuant to  
26 California Business and Professions Code sections 17200-17208, also seeks injunctive  
27 relief, restitution, and disgorgement of all benefits A-PARA TRANSIT CORP. and/or  
28

1                   DOES enjoyed from their failure to pay all straight time wages, overtime wages, and meal  
2                   and rest period compensation.

3                   I.    VENUE

4                   28.   Venue as to each DEFENDANT, A-PARA TRANSIT CORP. and/or DOES, is proper in  
5                   this judicial district, pursuant to Code of Civil Procedure section 395. DEFENDANTS A-  
6                   PARA TRANSIT CORP. and/or DOES conduct business and commit Labor Code  
7                   violations within Alameda County, and each DEFENDANT and/or DOE is within  
8                   California for service of process purposes. The unlawful acts alleged herein have a direct  
9                   effect on Plaintiff and those similarly situated within the State of California and within  
10                   Alameda County. DEFENDANTS A-PARA TRANSIT CORP. and/or DOES employ  
11                   numerous Class members who work in Alameda County, in California.

12                   II.    PARTIES

13                   A.    Plaintiffs.

14                   29.   At all relevant times, herein, Plaintiff DARRYL FOSTER is and was a resident of  
15                   California. At all relevant times, herein, he was employed by DEFENDANTS A-PARA  
16                   TRANSIT CORP. and/or DOES within the last four (4) years as a non-exempt bus driver  
17                   in California.

18                   30.   On information and belief, Plaintiff and all other members of the proposed class  
19                   experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' common  
20                   company policies of failing to pay all straight time and overtime wages owed.

21                   31.   On information and belief, Plaintiff and all other members of the proposed class  
22                   experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' common  
23                   company policies of illegally deducting wages from employees for meal periods during  
24                   which they were performing work.

25                   32.   On information and belief, Plaintiff and all other members of the proposed class  
26                   experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' common  
27                   company policies and/or practices of failing to pay all straight time and overtime wages

1 owed, and failing to provide compliant meal periods to employees before the end of their  
2 fifth hour of work or a second meal period before the end of the tenth hour or work, or  
3 compensation in lieu thereof.

4 33. On information and belief, Plaintiff and all other members of the proposed class  
5 experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' common  
6 company policies of failing to provide ten (10) minute paid rest breaks to employees whom  
7 worked four (4) hours or major fractions thereof.

8 34. On information and belief, Plaintiff and all other members of the proposed class  
9 experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' common  
10 company policies of failing to provide cool down recovery periods.

11 35. On information and belief, Plaintiff and all other members of the proposed class  
12 experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' common  
13 company policies of failing to provide Non-Exempt Employees with accurate itemized  
14 wage statements. On information and belief, DEFENDANTS and/or DOES failure to  
15 provide to their Non-Exempt Employees, including Plaintiff, with accurate itemized wage  
16 statements was willful.

17 36. On information and belief, Plaintiff and all other members of the proposed class  
18 experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' common  
19 company policies of failing to timely compensate Non-Exempt Employees all wages owed  
20 upon termination. On information and belief, DEFENDANT'S and/or DOES' failure to  
21 pay, in a timely manner, compensation owed to Non-Exempt Employees, including  
22 Plaintiff, upon termination of their employment with A-PARA TRANSIT CORP. and/or  
23 DOES was willful.

24 37. On information and belief, Plaintiff and all other members of the proposed class  
25 experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' fraudulent and  
26 deceptive business practices within the meaning of the Business and Professions Code  
27 section 17200, et seq.

1 38. On information and belief, Plaintiff and all other members of the proposed class  
2 experienced DEFENDANTS A-PARA TRANSIT CORP.'S and/or DOES' failure to  
3 provide personnel records within thirty (30) days of filing a request for personnel records.

4 39. Plaintiff and the proposed class are covered by, *inter alia*, California IWC Occupational  
5 Wage Order No. 9-2001, and Title 8, California Code of Regulations, §§ 11090 and 3395.

6 **B. DEFENDANTS.**

7 40. A-PARA TRANSIT CORP. and/or DOES own and operate trucks, industrial trucks,  
8 industrial vehicles, and/or industrial work sites, and, at all times during the liability period,  
9 have conducted business in Alameda County and elsewhere within California. At these  
10 work sites and throughout California, DEFENDANTS A-PARA TRANSIT CORP. and/or  
11 DOES have, among other things, employed persons as workers, drivers, bus drivers, bus  
12 operators, and/or other similar job designations.

13 41. A-PARA TRANSIT CORP. claims to be, "the one stop shop for all your transportation  
14 needs ranging from single contractor to multi center transportation." A-PARA TRANSIT  
15 CORP., [HTTP://WWW.APARATRANSIT.COM/SERVICES.PHP](http://WWW.APARATRANSIT.COM/SERVICES.PHP), (LAST VISITED SEPTEMBER 4,  
16 2018).

17 42. "APC's Team comprises the Chairman of the board and the company's original founders  
18 and owners. A-Paratransit's dedicated team has made it possible for us to grow from more  
19 than just a paratransit-services based company. Our ability to better understand the needs  
20 of our partners has given us the opportunity to help our local regional centers and their  
21 clientele." *Id.*

22 43. However, Defendant fails to properly care for its employees by failing to pay all time  
23 worked. Without money to feed their families and pay their bills, A-Paratransit's  
24 employees cannot grow personally or reach their own success.

25 44. A-PARA TRANSIT CORP. and/or DOES employed Plaintiff and members of the  
26 proposed Class throughout the statutory liability period as non-exempt drivers, bus drivers,  
27 bus operators, and/or other similar job designations. On information and belief, A-PARA  
28

1 TRANSIT CORP. and/or DOES employed Plaintiff and members of the proposed Class  
2 on an hourly basis within California. On information and belief, A-PARA TRANSIT  
3 CORP. and/or DOES exercised control over the wages, hours, and/or working conditions  
4 of Plaintiff and members of the proposed class.

5 45. A-PARA TRANSIT CORP. and/or DOES principal place of business is in the State of  
6 California.

7 46. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
8 DEFENDANTS DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore  
9 sues these DEFENDANTS by such fictitious names under Code of Civil Procedure section  
10 474. Plaintiff is informed and believes, and based thereon alleges, that each of the  
11 DEFENDANTS designated herein as a DOE is legally responsible in some manner for the  
12 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint  
13 to reflect the true names and capacities of the DEFENDANTS designated hereinafter as  
14 DOES when such identities become known.

15 47. Plaintiff is informed and believes, and based thereon alleges, that each DEFENDANT  
16 and/or DOE acted in all respects pertinent to this action as the agent of the other  
17 DEFENDANTS and/or DOES, carried out a joint scheme, business plan or policy in all  
18 respects pertinent hereto, and the acts of each DEFENDANT and/or DOES are legally  
19 attributable to the other DEFENDANTS and/or DOES.

20 **III. CLASS ACTION ALLEGATIONS**

21 48. Plaintiff brings this action on behalf of himself and all others similarly situated as a class  
22 action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to  
23 represent a Class composed of and defined as follows:

24  
25 All persons who are employed or have been employed by  
26 DEFENDANTS in the State of California as hourly, Non-Exempt  
27 drivers, bus drivers, bus operators, and/or other similar job  
28

1 designations and titles during the period of the relevant statute of  
2 limitations.

3 Plaintiff also seeks to represent subclasses composed of and defined as follows:

4  
5 All persons who are or have been employed by A-PARA TRANSIT  
6 CORP. and/or DOES in the State of California as drivers, bus  
7 drivers, bus operators, and/or other similar job designations and  
8 titles during the period of the relevant statute of limitations, who  
9 worked one (1) or more shifts in excess of five (5) hours.

10  
11 All persons who are or have been employed by A-PARA TRANSIT  
12 CORP. and/or DOES in the State of California as drivers, bus  
13 drivers, bus operators, and/or other similar job designations and  
14 titles during the period of the relevant statute of limitations, who  
15 worked one (1) or more shifts in excess of six (6) hours.

16  
17 All persons who are or have been employed by A-PARA TRANSIT  
18 CORP. and/or DOES in the State of California as drivers, bus  
19 drivers, bus operators, and/or other similar job designations and  
20 titles during the period of the relevant statute of limitations, who  
21 worked one (1) or more shifts in excess of ten (10) hours.

22  
23 All persons who are or have been employed by A-PARA TRANSIT  
24 CORP. and/or DOES in the State of California as drivers, bus  
25 drivers, bus operators, and/or other similar job designations and  
26 titles during the period of the relevant statute of limitations, who  
27  
28

worked one (1) or more shifts in excess of twelve (12) hours.

All persons who are or have been employed by A-PARA TRANSIT CORP. and/or DOES in the State of California as drivers, bus drivers, bus operators, and/or other similar job designations and titles during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of two (2) hours.

All persons who are or have been employed by A-PARA TRANSIT CORP. and/or DOES in the State of California as drivers, bus drivers, bus operators, and/or other similar job designations and titles during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of three (3) hour and one-half hours, but less than or equal to six (6) hours.

All persons who are or have been employed by A-PARA TRANSIT CORP. and/or DOES in the State of California as drivers, bus drivers, bus operators, and/or other similar job designations and titles during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All persons who are or have been employed by A-PARA TRANSIT CORP. and/or DOES in the State of California as drivers, bus drivers, bus operators, and/or other similar job designations and titles during the period of the relevant statute of limitations, who worked one (1) or more shifts in excess of ten (10) hours

1  
2 All persons who are or have been employed by A-PARA TRANSIT  
3 CORP. and/or DOES in the State of California as drivers, bus  
4 drivers, bus operators, and/or other similar job designations and  
5 titles during the period of the relevant statute of limitations, who  
6 separated their employment from DEFENDANTS.

7  
8 All persons who are or have been employed by A-PARA TRANSIT  
9 CORP. and/or DOES in the State of California as drivers, bus  
10 drivers, bus operators, and/or other similar job designations and  
11 titles during the period of the relevant statute of limitations, who  
12 worked one (1) or more shifts in which they received a wage  
13 statement for the corresponding pay period.

14  
15 All persons who are or have been employed by A-PARA TRANSIT  
16 CORP. and/or DOES in the State of California as drivers, bus  
17 drivers, bus operators, and/or other similar job designations and  
18 titles during the period of the relevant statute of limitations, who  
19 were deducted wages for meal periods.

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20  
21 49. Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to  
22 amend or modify the Class description with greater specificity or further division into  
23 subclasses or limitation to particular issues.  
24 50. This action has been brought and may properly be maintained as a class action under the  
25 provisions of section 382 of the California Code of Civil Procedure because there is a well-  
26 defined community of interest in the litigation and the proposed Class is easily  
27 ascertainable.

1    A. Numerosity.

2    51. The potential members of the Class as defined are so numerous that joinder of all the  
3    members of the Class is impracticable. While the precise number of Class members has  
4    not been determined at this time, Plaintiff is informed and believes that A-PARA  
5    TRANSIT CORP. and/or DOES currently employ, and during the liability period  
6    employed, over fifty (50) employees, non-exempt employees that are drivers, bus drivers,  
7    bus operators, and/or other similar job designations and titles in Alameda County and  
8    dispersed throughout California during the liability period and who are or have been  
9    affected by A-PARA TRANSIT CORP.'S and/or DOES' policies of wage theft, failure to  
10   pay all straight and overtime wages owed, failure to provide meal and/or rest periods  
11   without the appropriate legal compensation, willful failure to pay all wages due at time of  
12   separation from employment, failure to provide recovery periods, failure to timely pay  
13   waiting time monies, failure to provide personnel records upon request, and knowing and  
14   intentional failure to provide accurate and itemized employee wage statements.

15   52. Accounting for employee turnover during the relevant periods increases this number  
16   substantially. Upon information and belief, Plaintiff alleges A-PARA TRANSIT CORP.'S  
17   and/or DOES' employment records will provide information as to the number and location  
18   of all Class members. Joinder of all members of the proposed Class is not practicable.

19   B. Commonality.

20   53. There are questions of law and fact common to the Class that predominate over any  
21   questions affecting only individual Class members. These common questions of law and  
22   fact include, without limitation:

23                    (1)    Whether A-PARA TRANSIT CORP. and/or DOES violated  
24                    the Labor Code and/or applicable IWC Wage Orders in failing to pay its  
25                    non-exempt workers all earned wages at the regular rate for all hours  
26                    worked.

27                    (2)    Whether A-PARA TRANSIT CORP.'s and/or DOES'

1 uniform policies and/or practices whereby non-exempt workers were  
2 pressured and/or incentivized to forego taking meal and/or rest periods.

3 (3) Whether A-PARA TRANSIT CORP. and/or DOES violated  
4 Labor Code section 226.7, IWC Wage Order No. 9-2001 or other applicable  
5 IWC Wage Orders, and/or California Code of Regulations, Title 8, section  
6 11090, by failing to authorize, permit, and/or provide rest periods to its  
7 hourly, non-exempt employees for every four (4) hours or major fraction  
8 thereof worked and/or failing to pay said employees one (1) hour of pay at  
9 the employee's regular rate of compensation for each work day that the rest  
10 period was not authorized, permitted and/or provided.

11 (4) Whether A-PARA TRANSIT CORP. and/or DOES violated  
12 Labor Code section 226.7 and/or California Code of Regulations, Title 8,  
13 section 3395, by failing to authorize, permit, and/or provide recovery  
14 periods to its hourly, non-exempt employees in accordance with section  
15 3395.

16 (5) Whether A-PARA TRANSIT CORP. and/or DOES willfully  
17 failed to pay, in a timely manner, wages owed to members of the proposed  
18 Class who left A-PARA TRANSIT CORP.'s and/or DOES' employ or who  
19 were terminated.

20 (6) Whether A-PARA TRANSIT CORP. and/or DOES violated  
21 Labor Code section 203, which provides for the assessment of a penalty  
22 against the employer, by willfully failing to timely pay all wages owed to  
23 employees who left A-PARA TRANSIT CORP.'s and/or DOES' employ  
24 or who were terminated.

25 (7) Whether A-PARA TRANSIT CORP. and/or DOES had  
26 uniform policies and/or practices of failing to provide employees accurate  
27 and itemized wage statements.

(8) Whether A-PARA TRANSIT CORP. and/or DOES had uniform policies and/or practices of failing to provide personnel file upon request.

(9) Whether A-PARA TRANSIT CORP. and/or DOES had uniform policies and/or practices of failing to timely pay all wages owed to employees who left A-PARA TRANSIT CORP.'s and/or DOES' employ or who were terminated.

8 54. The answer to each of these respective questions will generate a common answer capable  
9 of resolving class-wide liability in one stroke.

10 55. Said common questions predominate over any individualized issues and/or questions  
11 affecting only individual members.

12 C. **Typicality.**

13 56. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff  
14 and all members of the proposed class sustained injuries and damages arising out of and  
15 caused by A-PARA TRANSIT CORP.'S and/or DOES' common course of conduct in  
16 violation of laws and regulations that have the force and effect of law and statutes as  
17 alleged.

18 57. Plaintiff DARRYL FOSTER was subjected to the same uniform policies and/or practices  
19 complained of herein that affected all such employees. Thus, as DARRYL FOSTER was  
20 subjected to the same unlawful policies and practices as all hourly non-exempt employees,  
21 his claims are typical of the class he seeks to represent.

22 || D. Adequacy of Representation.

23 58. Plaintiff will fairly and adequately represent and protect the interests of the members of the  
24 Class.  
25 59. Plaintiff is ready and willing to take the time necessary to help litigate this case.  
26 60. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and  
27 protect the interests of the members of the Class.

1 61. Counsel who represent Plaintiff are competent and experienced in litigating large  
2 employment class actions.

3 62. Specifically, William Turley, Esq., David Mara, Esq., Jamie Serb, Esq., and Tony Roberts,  
4 Esq., and Alexandra Shipman, Esq. are California lawyers in good standing.

5 63. Mr. Turley regularly lectures lawyers on wage and hour class action issues. He has been a  
6 featured speaker on many ACI Wage and Hour Class Action presentations and Consumer  
7 Attorney of California Wage and Hour Class Action presentations.

8 64. Mr. Turley is listed as Amicus counsel on over 20 California Supreme Court decisions.

9 65. Mr. Turley and Mr. Mara wrote winning amicus briefs in two very worker friendly  
10 California Supreme Court cases: *Augustus v. ABM Security Servs.* (2016) 2 Cal.5th 257  
11 and *Williams v. Superior Court* (decided July 13, 2017).

12 66. Mr. Turley is a Past President of Consumer Attorneys of San Diego and has been elected  
13 to the Board of Governors of the Consumer Attorneys of California for over 15 years. Mr.  
14 Turley is currently on and has been a member of the Consumer Attorneys of California  
15 Amicus Curie Committee for over 20 years.

16 67. Mr. Turley has had over 100 legal articles published, including some on California Labor  
17 Code.

18 68. Mr. Turley and Mr. Mara were appointed class counsel in the landmark California Supreme  
19 Court case, *Brinker v. Superior Court* and have been appointed as class counsel in many  
20 California wage and hour cases, in both State Court and Federal Court.

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21 69. Mr. Turley testified before the California Senate in a committee hearing on September 3,  
22 2015, regarding the new piece-rate bill, California Labor Code § 226.2.

23 70. On April 12, 2016 and April 20, 2016, Mr. Turley testified in front of the California Senate  
24 regarding an amendment to California Labor Code §§ 2698, *et seq.*, the “Private Attorneys  
25 General Act” or “PAGA.” Furthermore, Mr. Turley also participated in drafting the new  
26 amendment to PAGA.

27 71. The Turley & Mara Law Firm, APLC have the resources to take this case to trial and  
28 judgment, if necessary.

1 72. Mr. Turley and Mr. Mara have the experience, ability, and ways and means to vigorously  
2 prosecute this case.

3 **E. Superiority of Class Action.**

4 73. A class action is superior to other available means for the fair and efficient adjudication of  
5 this controversy. Individual joinder of all Class members is not practicable, and questions  
6 of law and fact common to the Class predominate over any questions affecting only  
7 individual members of the Class. Each member of the Class has been damaged and is  
8 entitled to recovery by reason of A-PARA TRANSIT CORP.'S and/or DOES' illegal  
9 policies and/or practices of failing to pay all straight time and overtime wages owed, failing  
10 to permit or authorize rest periods, failing to provide recovery periods, failing to provide  
11 meal periods, failing to provide personnel records, knowingly and intentionally failing to  
12 comply with wage statement requirements, and failing to pay all wages due at termination.  
13 74. Class action treatment will allow those similarly situated persons to litigate their claims in  
14 the manner that is most efficient and economical for the parties and the judicial system.  
15 Plaintiff is unaware of any difficulties that are likely to be encountered in the management  
16 of this action that would preclude its maintenance as a class action.  
17 75. Because such common questions predominate over any individualized issues and/or  
18 questions affecting only individual members, class resolution is superior to other methods  
19 for fair and efficient adjudication.

20 **IV. CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. AND/OR**  
**DOES: Failure to Pay All Straight Time Wages**

22 76. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
23 and every other paragraph in this Complaint herein as if fully plead.  
24 77. DEFENDANTS and/or DOES have had a continuous policy of not paying Plaintiff and  
25 those similarly situated for all hours worked.  
26 78. It is fundamental that an employer must pay its employees for all time worked. California  
27 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.  
28

1 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section  
2 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section  
3 1197 prohibits the payment of less than the minimum wage. Labor Code section 224 only  
4 permits deductions from wages when the employer is required or empowered to do so by  
5 state or federal law or when the deduction is expressly authorized in writing by the  
6 employee for specified purposes that do not have the effect of reducing the agreed upon  
7 wage.

8 79. Plaintiff and those similarly situated Class members were employed by A-PARA  
9 TRANSIT CORP. and/or DOES at all relevant times. A-PARA TRANSIT CORP. and/or  
10 DOES were required to compensate Plaintiff for all hours worked and were prohibited from  
11 making deductions that had the effect of reducing the agreed upon wage.

12 80. DEFENDANTS and/or DOES have had a continuous policy of not paying Plaintiff and  
13 those similarly situated for all hours worked. Specifically, DEFENDANTS and/or DOES  
14 have not paid for all time employees worked throughout the day. Including, but not limited  
15 to rounding, before "shifts" start, after "shifts" end, and/or any other time in the day when  
16 the employees were performing work tasks, subject to the control of employer and/or  
17 otherwise had work duties.

18 81. DEFENDANTS and/or DOES have a continuous and consistent policy of clocking-out  
19 Plaintiff and those similarly situated for a thirty (30) minute meal period, even though  
20 Plaintiff and all members of the Class work through their meal periods. Thus, A-PARA  
21 TRANSIT CORP. and/or DOES do not pay Plaintiff and each and every member of the  
22 Class for all time worked each and every day they work without a meal period and have  
23 time deducted.

24 82. Plaintiff and those similarly situated Class members are informed and believe and thereon  
25 allege that A-PARA TRANSIT CORP. and/or DOES breached the legal duty to pay full  
26 wages to Plaintiff by deducting a portion of the wages earned when Plaintiff's and the Class  
27 members' actual time records indicate that a meal period was not taken. A-PARA

1 TRANSIT CORP. and/or DOES did not make reasonable efforts to determine whether the  
2 time deducted was actually worked as reported by Plaintiff and Class members. A-PARA  
3 TRANSIT CORP. and/or DOES, without a reasonable basis, presumed that actual reported  
4 hours had not been accurately reported. The conduct complained of is a form of what is  
5 sometimes called "dinging," "shaving," or "scrubbing" and is prohibited by law.

6 83. DEFENDANTS and/or DOES have a continuous and consistent policy of not paying  
7 Plaintiff and those similarly situated for all time worked, including before Plaintiff and  
8 those similarly situated clock in for work shifts and after they clock out after work shifts.

9 84. DEFENDANTS and/or DOES have a continuous and consistent policy of shaving the time  
10 Plaintiff and those similarly situated work (referred to as "time shaving").

11 85. Thus, A-PARA TRANSIT CORP. and/or DOES shave/steal earned wages from Plaintiff  
12 and each and every member of the Class each and every day they work. A-PARA  
13 TRANSIT CORP. and/or DOES have not paid Plaintiff and the members of the Class all  
14 straight time wages owed.

15 86. Plaintiff and the Class members are informed and believe and thereon allege that as a direct  
16 result of DEFENDANT'S and/or DOES' uniform policies and/or practices, Plaintiff and  
17 the Class members have suffered, and continue to suffer, substantial unpaid wages, and  
18 lost interest on such wages, and expenses and attorneys' fees in seeking to compel A-PARA  
19 TRANSIT CORP. and/or DOES to fully perform their obligations under state law, all to  
20 their respective damage in amounts, according to proof at trial.

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21 87. As a direct result of A-PARA TRANSIT CORP.'s and/or DOES' policy of illegal wage  
22 theft, Plaintiff and those similarly situated have been damaged in an amount to be proven  
23 at trial.

24 88. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
25 below.

26 **SECOND CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. AND/OR**  
**DOES: Failure to Pay All Overtime Wages**

27 89. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
28

1 and every other paragraph in this Complaint herein as if fully plead.

2 90. It is fundamental that an employer must pay its employees for all time worked. California  
3 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.  
4 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section  
5 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section  
6 1197 prohibits the payment of less than the minimum wage. Labor Code section 224 only  
7 permits deductions from wages when the employer is required or empowered to do so by  
8 state or federal law or when the deduction is expressly authorized in writing by the  
9 employee for specified purposes that do not have the effect of reducing the agreed upon  
10 wage.

11 91. A-PARA TRANSIT CORP. and/or DOES failed to pay overtime when employees worked  
12 over eight (8) hours per day and when employees worked over forty (40) hours per week.

13 92. Plaintiff and those similarly situated Class members were employed by A-PARA  
14 TRANSIT CORP. and/or DOES at all relevant times. A-PARA TRANSIT CORP. and/or  
15 DOES were required to compensate Plaintiff for all overtime hours worked and were  
16 prohibited from making deductions that had the effect of reducing the agreed upon wage.

17 93. A-PARA TRANSIT CORP. and/or DOES failed to pay for the overtime that was due,  
18 pursuant to IWC Wage Order No. 9-2001, item 3(A).

19 94. DEFENDANTS and/or DOES have had a continuous policy of not paying Plaintiff and  
20 those similarly situated for all hours worked. Specifically, DEFENDANTS and/or DOES  
21 have not paid for all time employees worked throughout the day. Including, but not limited  
22 to rounding, before "shifts" start, after "shifts" end, and/or any other time in the day when  
23 the employees were performing work tasks, subject to the control of employer and/or  
24 otherwise had work duties.

25 95. Plaintiff and the Class members are informed and believe and thereon allege that as a direct  
26 result of DEFENDANT'S and/or DOES' uniform policies and/or practices, Plaintiff and  
27 the Class members have suffered, and continue to suffer, substantial unpaid overtime  
28

wages, and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to compel A-PARA TRANSIT CORP. and/or DOES to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial. A-PARA TRANSIT CORP. and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention on injuring Plaintiff and the Class members. A-PARA TRANSIT CORP. and/or DOES acted with malice or in conscious disregard of Plaintiff's and the Class Member's rights. In addition to compensation, Plaintiff is also entitled to any penalties allowed by law.

96. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

**THIRD CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. AND/OR  
DOES: Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab.  
Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8, § 11090)**

97. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

98. Under California Labor Code section 512 and IWC Wage Order No. 9, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

99. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of less than thirty (30) minutes.

100. Under California Labor Code section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each

1 workday that the meal period is not provided.

2 101. A-PARA TRANSIT CORP. and/or DOES failed to provide thirty (30) minute,

3 uninterrupted meal periods to its Non-Exempt Employees who worked for work periods of

4 more than five (5) consecutive hours. As such, A-PARA TRANSIT CORP. and/or DOES

5 non-exempt employees were required to work over five (5) consecutive hours at a time

6 without being provided a thirty (30) minute uninterrupted meal period within that time.

7 102. A-PARA TRANSIT CORP. and/or DOES failed to provide thirty (30) minute,

8 uninterrupted meal periods to its Non-Exempt Employees for every five (5) continuous

9 hours worked.

10 103. A-PARA TRANSIT CORP.'s and/or DOES' business model is such that Non-Exempt

11 Employees were assigned too much work and insufficient help due to chronic understaffing

12 to be able to take meal periods. Thus, Non-Exempt Employees are not able to take meal

13 periods.

14 104. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES had a pattern

15 and practice of assigning too much work to be completed in too short of time frames,

16 resulting in Plaintiff and those similarly situated not being able to take meal periods.

17 105. A-PARA TRANSIT CORP. and/or DOES would not permit Plaintiff and the Class to take

18 30-minute meal periods unless specifically scheduled by DEFENDANTS and/or DOES or

19 unless Plaintiff and the Class were expressly told to by DEFENDANTS and/or DOES. This

20 routinely resulted in Plaintiff and the Class members not being able to take a meal period,

21 if at all, until after the fifth hour.

22 106. A-PARA TRANSIT CORP.'S and/or DOES' business model was such that non-exempt

23 employees were assigned too much work that could not reasonably be completed in their

24 assigned shift, work, and/or route, resulting in non-exempt employees routinely and

25 regularly being forced to eat their meals while driving and/or while working their routes.

26 107. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES had a pattern

27 and practice of assigning too much work to be completed in too short of time frames,

28

resulting in Plaintiff and those similarly situated not breaking route to take meal periods.

108. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES had a pattern and practice of scheduling routes and assigning too much work to be completed in too short of time frames, resulting in A-PARA TRANSIT CORP. and/or DOES pressuring non-exempt employees to complete their routes and/or tasks within the rigorous time frames and not take meal breaks.

109. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES had a pattern and practice of scheduling routes and assigning too much work to be completed in too short of time frames, resulting in A-PARA TRANSIT CORP. and/or DOES discouraging non-exempt employees from taking meal periods.

110. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES had a pattern and practice of scheduling routes and assigning too much work to be completed in too short of time frames, resulting in A-PARA TRANSIT CORP. and/or DOES impeding non-exempt employees from taking meal periods.

111. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES valued productivity over providing meal periods and, because of this, meal breaks were not priorities to A-PARA TRANSIT CORP. and/or DOES.

112. Because of A-PARA TRANSIT CORP. and/or DOES demanding policies on route and/or completion times, Plaintiff and those similarly situated felt that breaking to exercise their rights to take meal periods would sacrifice their jobs with A-PARA TRANSIT CORP. and/or DOES.

113. Based on A-PARA TRANSIT CORP.'s and/or DOES' demanding route and/or task completion time policies, Plaintiff and those similarly situated routinely worked through their meal periods, which compromised the health and welfare of, not only Plaintiff and those similarly situated, but all members of the general public.

114. A-PARA TRANSIT CORP. and/or DOES did not have a policy of providing a second meal period before the end of the tenth hour.

1 115. Failing to provide compensation for such unprovided or improperly provided meal periods,  
2 as alleged above, A-PARA TRANSIT CORP. and/or DOES willfully violated the  
3 provisions of Labor Code sections 226.7, 512, and IWC Wage Order No. 9.

4 116. As a result of the unlawful acts of A-PARA TRANSIT CORP. and/or DOES, Plaintiff and  
5 the Class he seeks to represent have been deprived of premium wages, in amounts to be  
6 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties  
7 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage  
8 Order No. 9-2001. Plaintiff and the Class he seeks to represent did not willfully waive their  
9 right to take meal periods through mutual consent with A-PARA TRANSIT CORP. and/or  
10 DOES.

11 117. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
12 below.

13 **FOURTH CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. AND/OR**  
14 **DOES: Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage**  
**Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090)**

15 118. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
16 and every other paragraph in this Complaint herein, as if fully plead.

17 119. Under IWC Wage Order No. 9, every employer shall authorize and permit all employees  
18 to take rest periods, “[t]he authorized rest period time shall be based on the total hours  
19 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major  
20 fraction thereof.” IWC Wage Order 9-2001(12). The time spent on rest periods “shall be  
21 counted as hours worked for which there shall be no deduction from wages.” *Id.*

22 120. Under California Labor Code section 226.7, if the employer does not provide an employee  
23 a rest period in accordance with the above requirements, the employer shall pay the  
24 employee one (1) hour of pay at the employee's regular rate of compensation for each  
25 workday that the meal period is not provided.

26 121. At all relevant times, DEFENDANTS and/or DOES failed to authorize and/or permit rest  
27 period time based upon the total hours worked daily at the rate of ten (10) minutes net rest  
28 time per four (4) hours or major fraction thereof.

1 122. In the alternative, A-PARA TRANSIT CORP.'S and/or DOES' business model was such  
2 that non-exempt employees were assigned too much work that could not be reasonably  
3 completed within their assigned shift, work, and/or route, resulting in Non-Exempt  
4 Employees routinely and regularly being forced to work through their rest periods.

5 123. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES had a pattern  
6 and practice of assigning too much work to be completed in too short of time frames,  
7 resulting in Plaintiff and those similarly situated not breaking route to take rest periods.

8 124. Because of A-PARA TRANSIT CORP.'S and/or DOES' demanding policies and/or task  
9 completion times, Plaintiff and those similarly situated felt that breaking to exercise their  
10 rights to take rest breaks would sacrifice their jobs with A-PARA TRANSIT CORP. and/or  
11 DOES.

12 125. Throughout the statutory period, A-PARA TRANSIT CORP.'S and/or DOES' uniform  
13 policies and practices resulted in non-exempt employees not receiving rest breaks.

14 126. Throughout the statutory period, A-PARA TRANSIT CORP. and/or DOES valued  
15 productivity over providing rest periods and, because of this, rest periods were not priorities  
16 to A-PARA TRANSIT CORP. and/or DOES.

17 127. Throughout the statutory period, A-PARA TRANSIT CORP.'s and/or DOES' policies  
18 promoting productivity subjugated Plaintiff's and those similarly situated's rights to rest  
19 periods.

20 128. Based on A-PARA TRANSIT CORP. and/or DOES demanding route and work policies,  
21 Plaintiff and those similarly situated routinely worked through their rest periods, which  
22 compromised the health and welfare of, not only Plaintiff and those similarly situated, but  
23 all members of the general public.

24 129. As a result of the unlawful acts of A-PARA TRANSIT CORP. and/or DOES, Plaintiff and  
25 the Class he seeks to represent have been deprived of premium wages, in amounts to be  
26 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties  
27 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage  
28

1 Order No. 9-2001.

2 130. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
3 below.

4 **FIFTH CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. AND/OR**  
5 **DOES: Failure to Provide Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title**  
6 **8 § 3395)**

7 131. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
8 and every other paragraph in this Complaint herein, as if fully plead.

9 132. Under California Code of Regulations, Title 8, section 3395(d)(1), “[w]hen the outdoor  
10 temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and  
11 maintain one or more areas with shade at all times while employees are present that are  
12 either open to the air or provided with ventilation or cooling.” Cal. Code of Reg. Title 8, §  
13 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to  
14 accommodate the number of employees on recovery or rest periods, so that they can sit in  
15 a normal posture fully in the shade without having to be in physical contact with each  
16 other.” *Id.*

17 133. “Employees shall be allowed and encouraged to take a preventative cool-down rest in the  
18 shade when they feel need to do so to protect themselves from overheating.” Cal. Code of  
19 Reg. Title 8, § 3395(d)(3). “Such access to shade shall be permitted at all times.” *Id.*

20 134. A-PARA TRANSIT CORP. and/or DOES failed to permit access to shade and preventative  
21 cool down rest and/or recovery periods to Plaintiff and the Class members when the  
22 temperature reached eighty (80) degrees Fahrenheit. Specifically, Plaintiff and the Class  
23 members work in Sacramento during the summer and autumn months, when temperatures  
24 frequently exceed eighty (80) degrees Fahrenheit. However, DEFENDANTS A-PARA  
25 TRANSIT CORP. and/or DOES do not allow and encourage Plaintiff and the Class  
26 members to take preventative cool-down rest recovery periods in shaded areas when the  
27 applicable temperatures are reached. Thus, DEFENDANTS A-PARA TRANSIT CORP.  
28 and/or DOES failed to permit, allow, or encourage Plaintiff and the Class members to take  
preventative cool down recovery periods in the shade to protect against overheating when

the temperature exceeds eighty (80) degrees Fahrenheit.

135. DEFENDANTS A-PARA TRANSIT CORP. and/or DOES failed to utilize any alternative procedures for providing access to shade or equivalent protection to Plaintiff and the Class members. DEFENDANTS A-PARA TRANSIT CORP. and/or DOES failed to implement other cooling measures in lieu of shade at least as effective as shade in allowing employees to cool.

136. Therefore, A-PARA TRANSIT CORP. and/or DOES failed to provide preventative cool down rest and/or recovery periods to Plaintiff and the Class members in accordance with California Code of Regulations, Title 8, section 3395.

0 137. As a result of the unlawful acts of A-PARA TRANSIT CORP. and/or DOES, Plaintiff and  
1 the Class he seeks to represent have been deprived of premium wages, in amounts to be  
2 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties  
3 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7.

14 138. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
15 below.

**SIXTH CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. and/or DOES:  
Knowing and Intentional Failure to Comply with Itemized Employee Wage  
Statement Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 9; Cal.  
Code Regs., Title 8, § 11040)**

8 139. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
9 and every other paragraph in this Complaint herein as if fully plead.

140. Labor Code section 226 subdivision (a) requires DEFENDANTS and/or DOES to, inter

21 alia, itemize in wage statements and accurately report the total hours worked and total  
22 wages earned. A-PARA TRANSIT CORP. and/or DOES have knowingly and intentionally  
23 failed to comply with Labor Code section 226, subdivision (a), on each and every wage  
24 statement provided to Plaintiff DARRYL FOSTER and members of the proposed Class.

141. Labor Code section 1174 requires A-PARA TRANSIT CORP. and/or DOES to maintain  
and preserve, in a centralized location, records showing the daily hours worked by and the  
wages paid to its employees. A-PARA TRANSIT CORP. and/or DOES have knowingly

1 and intentionally failed to comply with Labor Code section 1174. The failure of A-PARA  
2 TRANSIT CORP. and/or DOES, and each of them, to comply with Labor Code section  
3 1174 is unlawful pursuant to Labor Code section 1175.

4 142. A-PARA TRANSIT CORP. and/or DOES failed to maintain accurate time records - as  
5 required by IWC Wage Order No. 9-2001(7), and Cal. Code Regs., Title 8 section 11090 -  
6 showing, among other things, when the employee begins and ends each work period, the  
7 total daily hours worked in itemized wage statements, total wages, bonuses and/or  
8 incentives earned, and all deductions made.

9 143. A-PARA TRANSIT CORP. and/or DOES have knowingly and intentionally failed to  
10 provide Plaintiff and the Class members with accurate itemized wage statements which  
11 show: "(1) gross wages earned, (2) total hours worked by the employee, . . . (4) all  
12 deductions, provided that all deductions made on written orders of the employee may be  
13 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the  
14 period for which the employee is paid, (7) the name of the employee and only the last four  
15 digits of his or her social security number or an employee identification number other than  
16 a social security number, (8) the name and address of the legal entity that is the employer  
17 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section  
18 1682, the name and address of the legal entity that secured the services of the employer,  
19 and (9) all applicable hourly rates in effect during the pay period and the corresponding  
20 number of hours worked at each hourly rate by the employee[.]" Labor Code section

21 226(a).

22 144. As a direct result of A-PARA TRANSIT CORP. and/or DOES unlawful acts, Plaintiff and  
23 the Class he intends to represent have been damaged and are entitled to recovery of such  
24 amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code section  
25 226.

26 145. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
27 below.

28 ///

**SEVENTH CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. and/or  
DOES: Failure to Pay All Wages Due at the Time of Termination from Employment  
(Lab. Code §§ 201-203)**

3 146. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
4 and every other paragraph in this Complaint herein as if fully plead.

5 147. Plaintiff DARRYL FOSTER terminated his employment with A-PARA TRANSIT CORP.  
6 and/or DOES.

7 148. Whether Plaintiff DARRYL FOSTER voluntarily or involuntarily terminated his  
8 employment with A-PARA TRANSIT CORP. and/or DOES, DEFENDANTS and/or  
9 DOES did not timely pay him straight time wages owed at the time of his termination.

10 149. Whether Plaintiff DARRYL FOSTER voluntarily or involuntarily terminated his  
11 employment with A-PARA TRANSIT CORP. and/or DOES, DEFENDANTS and/or  
12 DOES did not timely pay him overtime wages owed at the time of his termination.

13 150. Whether Plaintiff DARRYL FOSTER voluntarily or involuntarily terminated his  
14 employment with A-PARA TRANSIT CORP. and/or DOES, DEFENDANTS and/or  
15 DOES did not timely pay him meal and/or rest period premiums owed at the time of his  
16 termination.

17 151. Numerous members of the Class are no longer employed by A-PARA TRANSIT CORP.  
18 and/or DOES. They were either fired or quit A-PARA TRANSIT CORP. and/or DOES'  
19 employ. A-PARA TRANSIT CORP. and/or DOES did not pay all timely wages owed at  
20 the time of their termination. A-PARA TRANSIT CORP. and/or DOES did not pay all  
21 premium wages owed at the time of their termination.

22 152. Labor Code section 203 provides that, if an employer willfully fails to pay, without  
23 abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5,  
24 any wages of an employee who is discharged or who quits, the wages of the employee shall  
25 continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or  
26 until an action therefore is commenced.

27 153. A-PARA TRANSIT CORP. and/or DOES failed to pay Plaintiff DARRYL FOSTER a  
28 sum certain at the time of his termination or within seventy-two (72) hours of his

1       resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to  
2       the provisions of Labor Code section 203, Plaintiff DARRYL FOSTER is entitled to a  
3       penalty in the amount of his daily wage, multiplied by thirty (30) days.

4 154. When Plaintiff and those members of the Class who are former employees of A-PARA  
5 TRANSIT CORP. and/or DOES separated from DEFENDANT'S and/or DOES' employ,  
6 DEFENDANTS and/or DOES willfully failed to pay all straight time wages, overtime  
7 wages, meal period premiums, and/or rest period premiums owed at the time of  
8 termination.

9 155. A-PARA TRANSIT CORP. and/or DOES failure to pay said wages to Plaintiff DARRYL  
10 FOSTER and members of the Class he seeks to represent, was willful in that A-PARA  
11 TRANSIT CORP. and/or DOES and each of them knew the wages to be due, but failed to  
12 pay them.

13 156. As a consequence of A-PARA TRANSIT CORP.'s and/or DOES' willful conduct in not  
14 paying wages owed at the time of separation from employment, Plaintiff DARRYL  
15 FOSTER and members of the proposed Class are entitled to thirty (30) days' worth of  
16 wages as a penalty under Labor Code section 203, together with interest thereon and  
17 attorneys' fees and costs.

18 157. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
19 below.

20 EIGHTH CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. and/or  
21 DOES: Violation of Unfair Competition Law (California Bus. & Prof. Code, § 17200,  
et seq.)

22 158. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
23 and every other paragraph in this Complaint herein as if fully plead.

24 159. A-PARA TRANSIT CORP. and/or DOES failure to pay all straight time and overtime  
25 wages earned, failure to provide compliant meal and/or rest breaks and/or compensation in  
26 lieu thereof, failure to itemize and keep accurate records, failure to pay all wages due at  
27 time of termination, as alleged herein, constitutes unlawful activity prohibited by California  
28 Business and Professions Code section 17200, et seq.

1 160. The actions of A-PARA TRANSIT CORP. and/or DOES in failing to pay Plaintiff and  
2 members of the proposed Class in a lawful manner, as alleged herein, constitutes false,  
3 unfair, fraudulent and deceptive business practices, within the meaning of California  
4 Business and Professions Code section 17200, et seq.

5 161. Plaintiff is entitled to an injunction and other equitable relief against such unlawful  
6 practices in order to prevent future damage, for which there is no adequate remedy at law,  
7 and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as  
8 members of the general public actually harmed and as a representative of all others subject  
9 to A-PARA TRANSIT CORP. and/or DOES unlawful acts and practices.

10 162. As a result of their unlawful acts, A-PARA TRANSIT CORP. and/or DOES have reaped  
11 and continue to reap unfair benefits at the expense of Plaintiff and the proposed Class he  
12 seeks to represent. A-PARA TRANSIT CORP. and/or DOES should be enjoined from this  
13 activity and made to disgorge these ill-gotten gains and restore Plaintiff and the members  
14 of the proposed Class pursuant to Business and Professions Code section 17203. Plaintiff  
15 is informed and believes, and thereon alleges, that DEFENDANTS and/or DOES are  
16 unjustly enriched through their policy of not all wages owed to Plaintiff and members of  
17 the proposed Class.

18 163. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the  
19 proposed class are prejudiced by A-PARA TRANSIT CORP.'s and/or DOES' unfair trade  
20 practices.

---

21 164. As a direct and proximate result of the unfair business practices of A-PARA TRANSIT  
22 CORP. and/or DOES, and each of them, Plaintiff, individually and on behalf of all  
23 employees similarly situated, are entitled to equitable and injunctive relief, including full  
24 restitution and/or disgorgement of all wages and premium pay which have been unlawfully  
25 withheld from Plaintiff and members of the proposed Class as a result of the business acts  
26 and practices described herein and enjoining A-PARA TRANSIT CORP. and/or DOES  
27 from engaging in the practices described herein.

28

1 165. The illegal conduct alleged herein is continuing, and there is no indication that A-PARA  
2 TRANSIT CORP. and/or DOES will cease and desist from such activity in the future.  
3 Plaintiff alleges that if A-PARA TRANSIT CORP. and/or DOES are not enjoined from the  
4 conduct set forth in this Complaint, they will continue the unlawful activity discussed  
5 herein.

6 166. Plaintiff further requests that the Court issue a preliminary and permanent injunction  
7 prohibiting A-PARA TRANSIT CORP. and/or DOES from continuing to not pay Plaintiff  
8 and the members of the proposed Class overtime wages as discussed herein.

9 167. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
10 below.

11 **NINTH CAUSE OF ACTION AGAINST A-PARA TRANSIT CORP. and/or DOES:**  
12 **Failure to Provide a Copy of Personnel Records Within 30 Days of Receiving**  
13 **Personnel File Requests from Employees (Labor Code §1198.5).**

14 168. Plaintiff and those similarly situated Class members hereby incorporate by reference each  
15 and every other paragraph in this Complaint herein as if fully plead.

16 169. California law provides that current and former employees, as a matter of right, are entitled  
17 to inspect and receive a copy of their personnel files and records. Pursuant to *Labor Code*  
18 section 1198.5, upon a written request from a current or former employee, or a  
19 representative, the employer shall provide a copy of the personnel records not less than 30  
20 calendar days from the date the employer receives the request.

21 170. Plaintiff submitted a written Personal File Request to A-PARA TRANSIT CORP. on May  
22 31, 2018, as well as July 25, 2018 via U.S. Mail. To date, Plaintiff has not received his  
23 personnel file from A-PARA TRANSIT CORP.

24 171. By failing to provide employees with personnel records within thirty (30) days of receiving  
25 an employee's personnel file request, A-PARA TRANSIT CORP. willfully violated the  
26 provisions of Labor Code section 1198.5.

27 172. Pursuant to California Labor Code section 1198.5(k), "[i]f an employer fails to permit a  
28 current or former employee, or his or her representative, to inspect or copy personnel  
records within the times specified in this section, or times agreed to by mutual agreement

1 as provided in this section, the current or former employee or the Labor Commissioner may  
2 recover a penalty of seven hundred fifty dollars (\$750) from the employer."

3 173. As a consequence of A-PARA TRANSIT CORP.'s and/or DOES' willful conduct in not  
4 providing a copy of personnel records within 30 days of the filing of a personnel records  
5 request, Plaintiff DARRYL FOSTER and members of the proposed Class are entitled to  
6 seven hundred fifty dollars (\$750) as a penalty under Labor Code section 1198.5, together  
7 with interest thereon and attorneys' fees and costs.

8 174. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described  
9 below.

10 **V. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

- 12 A. That the Court determine that this action may be maintained as a class action;
- 13 B. For compensatory damages, in an amount according to proof at trial, with interest  
14 thereon;
- 15 C. For economic and/or special damages in an amount according to proof with interest  
16 thereon;
- 17 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,  
18 with interest thereon;
- 19 E. For compensation for all time worked;
- 20 F. For compensation for not being provided paid rest breaks;

---

- 21 G. For compensation for not being provided paid meal periods;
- 22 H. For compensation for not being provided paid preventative cool down rest and/or  
23 recovery periods;
- 24 I. For damages and/or monies owed for failure to comply with itemized employee wage  
25 statement provisions;
- 26 J. For penalties owed for failure to provide a copy of personnel records within 30 days of  
27 receiving personnel requests from employees;

- K. For all waiting time penalties owed;
- L. That defendants be found to have engaged in unfair competition in violation of sections 17200 et seq. of the California Business and Professions Code;
- M. That defendants be ordered and enjoined to make restitution to the Class due to their unfair competition, including disgorgement of their wrongfully withheld wages pursuant to California Business and Professions Code sections 17203 and 17204;
- N. That an order of specific performance of all penalties owed be issued under Business and Professions Code sections 17202;
- O. That defendants be enjoined from continuing the illegal course of conduct, alleged herein;
- P. That defendants further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the California Business and Professions Code;
- Q. That defendants be enjoined from further acts of restraint of trade or unfair competition;
- R. For attorneys' fees;
- S. For interest accrued to date;
- T. For costs of suit and expenses incurred herein; and
- U. For any such other and further relief as the Court deems just and proper.

Dated: 9/17/18

## THE TURLEY & MARA LAW FIRM, APLC

William Turley, Esq.

David Mara, Esq.

Jamie Serb, Esq.

Tony Roberts, Esq.

Alexandra Shipman, Esq.

Representing Plaintiff DARRYL FOSTER  
on behalf of himself, all others similarly situated,  
and on behalf of the general public.

# EXHIBIT B

SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

A-PARA TRANSIT CORP.; and DOES 1-100

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DARRYL FOSTER on behalf of himself, all others similarly situated, and on behalf of the general public

**FOR COURT USE ONLY**  
**(SOLO PARA USO DE LA CORTE)**

**FILED**  
**ALAMEDA COUNTY**

SEP 18 2018

CLERK OF THE SUPERIOR COURT  
By *Sue Fink* Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:  
(El nombre y dirección de la corte es): Alameda

CASE NUMBER:  
(Número del Caso)

**RG18920985**

1225 Fallon Street  
Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

William Turley, Esq./The Turley & Mara Law Firm, APLC, 7428 Trade Street, San Diego, CA 92121  
(619) 234-2833

DATE: **SEP 18 2018**  
(Fecha)

*Chad Fink*

Clerk, by  
(Secretario)

, Deputy  
(Adjunto)

*Sue Fink*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

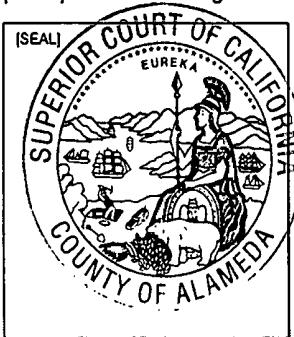
**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	

4.  by personal delivery on (date):



# EXHIBIT C

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William Turley, Esq. (SBN 122408) The Turley & Mara Law Firm, APLC 7428 Trade Street San Diego, CA 92121 TELEPHONE NO.: (619) 234-2833 FAX NO.: (619) 234-4048		FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiff, Darryl Foster		FILED ALAMEDA COUNTY SEP 18 2018 CLERK OF THE SUPERIOR COURT BY <i>Sue Pesko</i> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:		CASE NUMBER: <b>RG18920985</b>
CASE NAME: <b>Darryl Foster v. A-Para Transit Corp.</b>		JUDGE: DEPT:
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded demanded exceeds \$25,000) <input type="checkbox"/> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<b>Other PI/PD/WD (Personal Injury/Property</b> <b>Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	<b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)
<b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	<b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 9 (Nine)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 9/17/2018

Alexandra Shipman, Esq.

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

# EXHIBIT D

THE TURLEY LAW FIRM, APLC  
 Attn: Turley Esq, William  
 7428 Trade Street  
 San Diego, CA 92121

A-Para Transit Corp

**Superior Court of California, County of Alameda  
 Rene C. Davidson Alameda County Courthouse**

Foster	Plaintiff/Petitioner(s)	No. <u>RG18920985</u>	
	VS.		
A-Para Transit Corp	Defendant/Respondent(s) (Abbreviated Title)	<b>NOTICE OF HEARING</b>	

To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing  
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

**Complex Determination Hearing:**

DATE: 10/30/2018 TIME: 03:00 PM DEPARTMENT: 23  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

**Case Management Conference:**

DATE: 11/20/2018 TIME: 03:00 PM DEPARTMENT: 23  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb ([www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb)). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

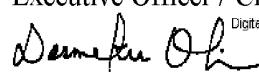
If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at [Dept.23@alameda.courts.ca.gov](mailto:Dept.23@alameda.courts.ca.gov) or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 09/19/2018

Chad Finke Executive Officer / Clerk of the Superior Court

By

 Digital

Deputy Clerk

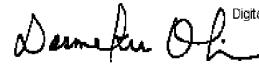
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**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 09/20/2018.

By

 Digital

Deputy Clerk

# EXHIBIT E

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William Turley, Esq., 122408 The Turley and Mara Law Firm, APLC 7428 Trade Street San Diego, CA 92121 TELEPHONE NO.: (619) 234-2833 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY <b>FILED</b> SEP 21 2018 
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Alameda County 1225 Fallon Street, #109 Oakland, CA 94612-4293	
PLAINTIFF/PETITIONER: Darryl Foster DEFENDANT/RESPONDENT: A-Para Transit Corp., et al.	CASE NUMBER: RG18920985
<b>PROOF OF SERVICE OF SUMMONS</b>	Ref. No. or File No.: A-Para Transit

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action. **BY FAX**

2. I served copies of: Civil Case Cover Sheet, Summons, Complaint, Alameda ADR

3. a. Party served: A-Para Transit Corp.

b. Person Served: SURBHI KUMAR - Person Authorized to Accept Service of Process

4. Address where the party was served: 1400 DOOLITTLE DR  
SAN LEANDRO, CA 94577

5. I served the party

b. by substituted service. On (date): 09/19/2018 at (time): 3:35PM I left the documents listed in item 2 with or in the presence of: Sonia Guswami (Accounts Manager) - Person In Charge Of Office (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.

(4) A declaration of mailing is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

On behalf of:  
A-Para Transit Corp.

under: CCP 416.10 (corporation)

7. Person who served papers

a. Name: John M. Butler

b. Address: One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 140.00

e. I am:

- (3) registered California process server.
  - (i) Employee or independent contractor.
  - (ii) Registration No. 2017-1004
  - (iii) County Contra Costa

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Date: 09/20/2018

John M. Butler  
(NAME OF PERSON WHO SERVED PAPERS)

JOHN M. BUTLER

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): William Turley, Esq., 122408 The Turley and Mara Law Firm, APLC 7428 Trade Street San Diego, CA 92121		TELEPHONE NO.: (619) 234-2833	FOR COURT USE ONLY	
ATTORNEY FOR (Name): Plaintiff		Ref. No. or File No. A-Para Transit		
Insert name of court, judicial district or branch court, if any: Oakland Civil 1225 Fallon Street, #109 Oakland, CA 94612-4293				
PLAINTIFF: Darryl Foster				
DEFENDANT: A-Para Transit Corp., et al.				
PROOF OF SERVICE BY MAIL				CASE NUMBER: RG18920985

**BY FAX**

I am a citizen of the United States, over the age of 18 and not a party to the within action. My business address is 504 Redwood Blvd., Suite 223 Novato, CA 94947.

On 09/20/2018, after substituted service under section CCP 415.20(a) or 415.20(b) or FRCP 4(e)(2)(B) or FRCP 4(h)(1)(B) was made (if applicable), I mailed copies of the:

Civil Case Cover Sheet, Summons, Complaint, Alameda ADR

to the person to be served at the place where the copies were left by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

A-Para Transit Corp.

SURBHI KUMAR

1400 DOOLITTLE DR  
SAN LEANDRO, CA 94577

I am readily familiar with the firm's practice for collection and processing of documents for mailing. Under that practice, it would be deposited within the United States Postal Service, on that same day, with postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

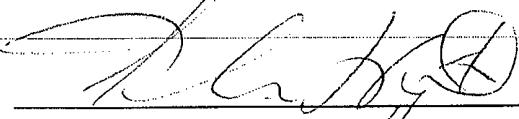
Fee for Service: \$ 140.00

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on 09/20/2018 at Los Angeles, California.

One Legal - 194-Marin

504 Redwood Blvd #223

Novato, CA 94947



Khari Wyatt

OL# 12323634